IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1677 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDUBHAI ALIAS SAMAJIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1677 of 2001

MR AD SHAH for Petitioners

MR AD OZA PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/04/2001

ORAL JUDGEMENT

Leave to correct the cause title.

Heard Mr.A.D.Shah, learned advocate for the

petitioner and Mr.A.D.Oza, learned Public Prosecutor on behalf of the respondent - State.

Rule. Mr.A.D.Oza, learned Public Prosecutor waives service of Rule on behalf of the respondent State.

#. The brief facts of the present petition are as under :-

Suryakiran Co-operative Housing Society is a registered body and members of the said society had undertaken the construction of the said premises. Suryakiran Co-operative Housing Society, Unit No.1 was completed and the construction of Unit No.2 was going on. The petitioner No.1 being the Chairman of the said Suryakiran Co-operative Housing Society was looking after the affairs of the society and originally accused No.3 Mambtaben was appointed as Architect and accused No. 2 was Structural Engineer and Designer. The society having completed the construction work of Unit No.1 had allotted the premises to the members after obtaining necessary permission and members were actually residing in Unit No.1. However, since the construction of Unit No.2 being in progress, the same was not occupied by any members but according to the case of the prosecution, some labourers were residing there. According to the case of the prosecution that on 26th January, 2001 witnesses the unprecedented havoc at the hands of nature keeping entire machinery of the Government inaticipating the outcome of such unimaginable earthquake in last 50 years where number of houses in different parts of the State of Gujarat grumbled to the ground resulting into unimaginable death and destruction of buildings. According to the prosecution case, that these accused had used materials of inferior quality and the normal requirements of observing the rules and procedure for constructing the high-rise buildings were totally neglected and resultantly, four labourers and one son of the member were died as result of the collapse of this building on account of earthquake witnessed on 26th January, 2001. However, so far Unit No.2 is concerned, no allotment letter has been issued by the petitioner in favour of any such member but in all 13 [thirteen] members were registered and part payments were made by all thirteen members to the petitioner and the petitioner had received said part payment from these thirteen members for Unit No.2. According to the petitioner, because the Unit No.2 which was in fact under construction, was collapsed and in all five persons have died and therefore a complaint is came to be registered on 19th February, 2001 by the concerned Senior PSI Shri

K. S. Patel against (1) Chandubhai Haribhai Ardeshna, (2) Mamta Sanjay Shah and (3) Uttpal Sampatbhai Desai under Section 304-A, 337, 406, 420 read with Section 114 of the IPC, however, subsequently, Section 304 of IPC has been added on 23rd March, 2001 against the present petitioners. The present petitioner has filed Misc. Criminal Application No. 110 / 2001 before the concerned Sessions Judge, Valsad at Navsari under Section 439 of CrPC, 1973. The said application has been rejected by the concerned Sessions Judge, Valsad at Navsari on 3rd March, 2001, which has given rise to filing of this petition by the present petitioners. This Court has issued notice to the respondent - State, one Anilkumar Chhotubhai Desai, Circle Police Inspector, Bilimora has filed affidavit in reply on 28th march, 2001 against that rejoinder has been filed by the petitioner on 6th April, 2001.

#. I have considered the averments made in the present application and averments made in the reply as well as rejoinder and also considering the submission made by both the learned advocates, without deciding the merits of the matter and considering the request of both the learned advocates for the parties who requested not to pass reasoned order and therefore considering the matter and before passing the final order, according to my opinion, some observations made by the Apex Court as well as Division Bench of this Court while dealing with such application which are pertinent to quote in relevance of the facts and circumstances of this case which are reproduced as under :-

Recently, the Apex Court in case of GAYA PRASAD V. PRADEEP SRIVASTAVA reported in (2001) 2 SCC page 604, para-19 observed as under :-

"The time is running out for doing something to solve the problem which has already grown into monstrous form. If a citizen is told that once you resort to legal procedure for realisation of your urgent need you have to wait and wait for 23 to 30 years, what else is it if not to inevitably encourage and force him to resort to extra-legal measures for realising the required reliefs. A Republic, governed by rule of law, cannot afford to compel its citizens to resort to such extra-legal means which are very often contra-legal means with counterproductive results on the maintenance of law and order in the Country."

There is recent observation of the Apex Court in case of MAKAHN LAL BANGAL V. MANAS BHUNIA, reported in (2001) 2, SCC 652, para-26,

> "An alert Judge actively participating in court proceedings with a firm grip on oars enables the trial smoothly negotiating on shorter routes avoiding prolixity and expeditiously attaining the destination of a just decision. The interest of the counsel for the parties in conducting the trial in such a way so as to gain success for their respective clients is understandable but the obligation of the Presiding Judge to hold the proceedings so as to achieve the dual objective search for truth and delivering justice expeditiously - cannot be subdued. However, sensitive the subject matter of trial may be; the courtroom is no place of play for passions, emotions and surcharged enthusiasm."

Recent observation of the Apex Court in case of GOVERNMENT OF A.P. V. A.P. JAISWAL reported in (2001), 1 SCC 748, para-24 which runs as under :

> "Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect for the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice."

There is recent observation of the Division Bench of this Court in case of PEOPLES UNION FOR C.L. VS. STATE [Coram : D.M.Dharmadhikari, C.J.] reported in 2001 (1) G.L.R., page 547 observed that;

> "A Judge on assuming office during his tenure sits cut-off from the society as he cannot continue to be in public life, but as he also comes from the society with his own experience of it, he is better stationed at a distance from the problems of the society to view them in a more objective, detached and dispassionate manner, than those involved in it, and for that reason, he is more suited to resolve conflicts and

competing claims of the individual and the society. [para 22]".

The Apex Court in a decision rendered in case of JOGINDAR KUMAR VS. STATE OF UP reported in AIR 1994 S.C. page 1349, certain observations are quoted as under :-

`No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Office in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave station without permission would do. The, there is the right to have some one informed. That right of the arrested person, upon request, to have someone informed and to consult privately with a lawyer was recognised by Section 56(1) of the Police and Criminal Evidence Act, 1984, in England. These rights are inherent in Arts. 21 and 22 (1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, the Supreme Court issued the following

requirements :

(1) An arrested person being held in custody is entitled, if he so request to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

(2) The police officer shall inform the arrested person when he is brought to the police station of this right.

(3) An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Arts. 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with. The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals."

23. In India, Third Report of the National Police Commission at Pg-32 also suggested :

"... An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances :-

(i) The case involves a grave offence like murder, dacoity, robbery , rape etc. , and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade the process of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines ... "

#. After considering the above observations as well as the averments made in the application as well as reply and rejoinder in such type of cases, it is the duty of the court to see and protect the interest of the persons who have become victim in such incident and simultaneously also to consider the fate of the persons who are behind the bar because of this incident.

#. Learned advocate Mr.A.D.Shah appearing on behalf of the petitioners has made statement before this Court that the petitioners are ready and willing to deposit the entire amount of Rs.11,67,500/- which has been received by them from said 13 members, before this Court by way of demand draft drawn in favour of the Registrar of this Court on or before 24th April, 2001. Learned Advocate Mr.A.D.Shah has also made a statement before this Court that the petitioners are also prepared to deposit total amount of Rs.3,50,000/- [Rs.70,000/- for each victim] in respect of five deceased persons by way of demand draft before this Court within period of 10 days from today. Mr.A.D.Shah, learned advocate has also made further statement before this Court that the petitioner No.1 Chandubhai alias Samjubhai Hirabhai Ardesania will file necessary undertaking before this Court in the capacity of Chairman of Suryakiran Co-operative Housing Society to the effect that the petitioners who received payment from said 13 members totalling Rs.11,67,500/will be deposited before this Court by way of demand draft and the petitioner No.1 will also file necessary undertaking to the effect that the petitioners are willing to complete the construction work of Suryakiran Unit No.2 and those members who want to continue in the scheme will be allotted flats as per the original booking for the same price of the apartment and no extra amount will be charged within period of 24 months from today. However, if member/s desire to withdraw his amount, the petitioners will have no objection if said amount is refunded to the concerned member from the amount deposited by the petitioners before this Court in the capacity of the Chairman of Suryakiram Co-operative Housing Society Limited. Mr.A.D.Shah, learned advocate has made further statement before this Court that this undertaking will be filed by the present petitioners with

full sense of responsibility to complete the construction of said Suryakiran Unit No.2 and allot apartment / flats to members respectively on full and final payments as per the original scheme by the members within period of 24 months from today.

#. After considering the aforesaid statements and submissions of the learned Advocate Mr.Shah so also considering the fact that as per the statement made at the bar, necessary undertakings will be filed by the present petitioners before this Court within 10 days from today and petitioners will accordingly deposit Rs.11,67,500/- before this Court on or before 24-4-2001 so also the amount of Rs.3,50,000/- in respect of five victims of the incident will be deposited by the petitioner before this Court within 10 days from today and considering the facts of the present case and in view of the observations made by the Apex Court including the observations of the Division Bench of this Court, following order is passed.

The parties do not press for reasoned order. Considering the submissions made on behalf of the parties, and having regard to the circumstances and facts of the case, the application is allowed and they are / is ordered to be released on bail in connection with Crime Register No. I- 21 / 2001 registered at Bilimora Police Station for the offence charged against them in this application on executing bond of Rs.25,000/- each (Rupees Twenty Five Thousand only) with one surety of the like amount to the satisfaction of the lower Court and subject to the conditions that they shall,

a) not take undue advantage of their liberty or abuse his liberty;

b) not to try to tamper or pressurize the prosecution witnesses or complainant in any manner;

c) maintain law and order and should co-operate the investigating officers;

d) not act in a manner injurious to the interest of the prosecution;

e) mark their presence before Bilimora Police Station on every Sunday between 9.00 a.m. to 2.00 p.m. till filing of the chargesheet and after filing of the chargesheet against the present petitioners, shall mark their presence

before the aforesaid police station once in a month preferably on 1st Sunday of each month till the trial is over.

f) furnish the address of their residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

g) surrender their Passport, if any, to the lower court within a week;

3. If breach of any of the above conditions is committed, the Sessions Judge, Valsad at Navsari will be free to issue warrant or take appropriate action in the matter.

4. Bail before the lower Court having jurisdiction to try the case. It would be opened to the trial court concerned to give time to furnish the solvency certificate if prayed for.

#. In view of statement made by the learned Advocate Mr.A.D.Shah on behalf of the petitioner to the effect that the amount of Rs.11,67,500/- so also the amount directed to be deposited against five deceased persons of the incident which comes to Rs.3,50,000/-, which will be deposited before this Court in the name of Registrar of this Court, therefore, the Registry of this Court is directed to accept the aforesaid amount from the petitioner by way of demand draft in the name of the Registrar of this Court and upon realisation of the said amount, the Registrar of this Court will deposit the said amount before the State Bank of India, High Court Branch, Sola, Ahmedabad for a period of one year in the name of the Registrar of this Court. However, it is open for the parties including concerned members of Unit No.2 and legal heirs of victims in case of any difficulty in respect of the amount which may be deposited before this Court, the respective party including concerned members of Unit No.2 and legal heirs and victims will be at liberty to apply before this Court by way of necessary application.

#. It is further directed to the petitioners to supply xerox copy of the affirmed undertaking to the office of the Public Prosecutor, concerned trial court and to the concerned investigating officer.

#. It is also made it clear that the amount of Rs.70,000/- in respect of each victim who died in the

incident, such deposit of Rs.70,000/- for each victim shall not come in their way for claiming compensation under the Workmen's Compensation Act.

#. It is further directed to the petitioners that in pursuance of the statement made before this court, necessary undertakings as referred to in this order are required to be filed before this Court by the petitioners within 10 days from today and the such undertakings are required to be strictly complied with by the petitioners without fail, otherwise in the event of non compliance of any such term of the said undertakings, the respondent State as well as the concerned members of Unit No.1 and Unit No.2 are entitled to file necessary application before this Court for cancellation of order granting bail in favour of the petitioners.

##. This order is passed by this Court considering the peculiar facts and circumstances of the case as well as considering the undertaking of the petitioner and depositing the amount for the victim as well as members, therefore this order may not be treated as precedent for other similar cases.

Rule is made absolute accordingly. Direct service is permitted today.

Date : 18-4-2001 [H.K.Rathod, J.]

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